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NEW YORK-ONEIDA TREATY OF 1795: A FINDING OF FACT

*Jack Campisi**

In a recent trial in federal court the Oneida Indian Nation contended that a 1795 treaty between the nation and the state of New York ceding some 140,000 acres of its reservation was illegal.¹ While the case involved a series of complex legal issues, the essential question of fact was deceptively simple: was the New York-Oneida Treaty of 1795 carried out in accordance with the provisions of the Non-Intercourse Act of 1793?

Background: Federal Policy

Federal Indian policy during the 1790's was dictated by the need to guarantee and maintain peaceful relations with Indian tribes, particularly the so-called Six Nations. As Secretary of War Henry Knox wrote in 1794, "The United States can get nothing by an Indian war, but they risk men, money, and reputation."² For his part, President George Washington saw the necessity of tying the interests of the Indian nations to the United States government by annual presents and visits to the Capitol at Philadelphia. He wrote to the Senate on March 23, 1792, of the advantages of such a course of action in which "... the introduction among them [of] some of the primary principles of civilization" could result, "... as well as more firmly to attach them to the interests of the United States. . . ." He went on to single out the Five Nations and asked the Senate to approve the expenditure of \$1,500 for gifts to the nations.³

Beyond these expressions of policy, the federal government took specific actions to protect the rights of the Indian nations and prevent the outbreak of hostilities. In 1790 Congress passed and the President signed the Non-Intercourse Act⁴ which prohibited the transfer of Indian land except through the instrument of a federal treaty, provided for the licensing of traders, and extended criminal penalties to cover acts committed by whites against Indians in the Indian territory. However, white incursions on Indian lands continued, and Washington, determined to maintain law and order on the frontier and secure the good will of the Indian tribes, proposed changes to strengthen the Act. On March 1, 1793,⁵ the government amended

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the Act, adding the requirement that a United States Indian Commissioner be present and preside over any treaty where a state negotiated for the land. Such treaties were subject to Senate approval. As Prucha describes the policy:

The vital sections of the laws dealt with the crisis of the day on the frontier. They [the laws] sought to provide an answer to the charge that treaties with the Indians, which guaranteed their rights to the territory behind the boundary lines, were not respected by the United States. The laws were not "Indian" laws; they touched the Indian only indirectly, as they limited him in his trade and his sale of land. The legislation was, rather, directed again the lawless whites on the frontier and sought to restrain them from violating the sacred treaties made with the Indians.⁶

Added to this exigency were the policies of states like New York, which for over a decade had ignored or violated national Indian policy in their efforts to secure title to Indian lands. As late as 1788 New York agents had pressured Indian tribes to cede large tracts of land in contravention of national policy, while agents from Pennsylvania forced the Seneca to sell tracts of land guaranteed them under the Treaty of Fort Stanwix in 1784. Such was the consternation among Indian tribes, particularly the Iroquois, over the confusion of policy and the cupidity of state and private land agents that President Washington, responding to complaints of the Seneca chief, Cornplanter, gave specific assurances of protection and access to federal courts.⁷

With complaints of this sort common along the frontier and with the Indian nations of the Ohio Valley in a virtual state of war with the United States, the national government moved to placate and protect the tribes, particularly the Iroquois of the northern district. In furtherance of these efforts, President Washington appointed Timothy Pickering to treat with the Six Nations at Canandigua in the fall of 1794. A treaty was completed on November 11, 1794, in which, in Article 2, the United States acknowledged the lands reserved to the Oneida, Onondaga, and Cayuga nations in New York, guaranteed their free and undisturbed use of the land, and assured that "... the said reservations shall remain theirs, until they choose to sell the same to the people of the United States, who have the right of purchase."⁸ A similar territorial guarantee was granted to the Seneca in Article 3, and in Article 4 the Senecas, Cayugas, Onondagas, and Oneidas gave reciprocal guarantees that they would hold no claims to the lands they had ceded. Finally, as a sign of friendship, "... and because the United States desire with humanity

and kindness, to contribute to their comfortable support; and to render the peace and friendship hereby established strong and perpetual . . .," the United States granted the nations a perpetual annuity of \$4,500. If anything, this treaty strengthened the federal protection by restricting any cession of land to the national government. It was followed by a second treaty on December 2d in which the Oneidas and Tuscaroras received indemnification for their losses in the Revolutionary War.⁹ Both treaties were ratified on January 2, 1795.

* * *

It should be noted at this juncture that while the Canandigua Treaty grouped the four Indian tribes, an essential distinction was made between the Oneidas and the tribes that resided with them, the Tuscaroras, the Stockbridge, and the Brothertown, and the Seneca, Cayuga, Onondaga, and, by implication, the Mohawks, who were not signers of the treaty. The Oneidas and their allied tribes were consistently guaranteed their territory by the colonial cause. This guarantee began with the Treaty of Fort Stanwix in 1784¹⁰ and was reaffirmed with the Treaty of Fort Harmar in 1789.¹¹ Unlike the other Iroquois nations, the Oneidas never suffered the implications of defeat nor were they subject to any changes in status which accrued from that condition. As far as the national government was concerned, the Oneida position was one of uninterrupted sovereignty, a position affirmed repeatedly in treaties.

Background: State Policy

New York State's attempts to extinguish Iroquois land claims began as early as 1782 and were motivated by the imminent cessation of war with England along with the need to provide land as payment to the soldiers of the Continental armies. The obvious source of land was that of the Iroquois allies of the British. In 1782 the New York Surveyor General was authorized to pass out land certificates "... which now are, or heretofore were possessed and occupied by any of the Six Nations, the Oneida and Tuscarora's excepted."¹² The following year the state established a Board of Commissioners of Indian Affairs to carry out state Indian land policy.¹³

These state efforts caused concern in the national government, but New York persisted in its land policy in violation of the Articles of Confederation which granted the Congress sole power to regulate Indian affairs "... providing the legislative right of any state within its own limits be not infringed or violated."¹⁴ In 1784 the national

government moved to strengthen its position with the Six Nations by negotiating a treaty guaranteeing, among other things, that the Oneidas and Tuscaroras would be secure in the possession of their lands.¹⁵ This guarantee, like the prohibition in the Articles of Confederation, proved no hinderance to the New York commissioners, who opened negotiations with the Oneidas the following year for a cession of land in what is now Broome and Chenango counties.¹⁶

Again, in 1788, New York renewed efforts to purchase Oneida and other Iroquois lands. This came at a time when the national government was attempting to negotiate agreements with the Six Nations to prevent their joining the Indians of the Ohio River Valley and at a time when the Iroquois were enraged at efforts of private land speculators like Phelps and Livingston to swindle them out of large tracts of land.¹⁷ The state, while deploring these individual efforts to secure Indian lands, nonetheless proceeded with efforts of its own which resulted in the Treaty of Fort Schuyler (Fort Stanwix) on September 22, 1788, by which the Oneidas ceded to the state some six million acres of land for \$4,500 in cash and goods and \$600 in perpetual annuity. In addition, the Oneidas reserved to themselves some 300,000 acres of land around Lake Oneida.¹⁸ That winter, the national government completed the Treaty of Fort Harmar, renewing its guarantee of Oneida territory.¹⁹

Neither the ratification of the United States Constitution, with its proscription on state treaty-making powers nor the Non-Inter-course Acts of 1790 and 1793 deterred New York in its land acquisition policy. In March of 1793, a few days after the passage of the second Non-Intercourse Act, the commissioners of New York entered into a land agreement with the Onondagas.²⁰ The legislature was so anxious to purchase land that it invited the Oneidas and Onondagas to a conference in January of 1794, without informing Governor Clinton of their intentions.²¹ The chiefs of the Oneidas and Onondagas arrived in Albany, apparently to the chagrin of Governor Clinton, who wrote the legislature:

These Indians have been several days in town and have repeatedly signified to me their desire to be particularly informed, of the reasons which induced the Legislature to request their attendance, and appear anxious to return home to prepare for their spring avocations.²²

Governor Clinton went on to say:

It may not be improper again to mention, that there is at present no person authorized by law to confer or enter into any negotia-

tions with those Indians, and as I have no accurate knowledge of the nature and extent of the objects which the Legislature have in contemplation, I am unable to take any preparatory measures to to facilitate the completion of them.²³

The Governor was then directed to confer with the Oneidas and Onondagas to determine if they wished to sell any land.²⁴ In March, 1794, the legislature appointed six commissioners to deal with the Six Nations.²⁵ They were unsuccessful, but the state, undaunted by the Treaty of Canandigua (November 11, 1794), reopened negotiations in the spring of 1795.

New York State-Oneida Treaty of September 15, 1795

The winter of 1795 began with several important changes in government personnel. Henry Knox resigned as Secretary of War on December 2, 1794,²⁶ and was replaced by Timothy Pickering, the architect of the Canandigua Treaty, on January 2, 1795.²⁷ General Israel Chapin, Sr., United States agent to the Six Nations, died in the winter of 1795 and was replaced by his son, Israel Chapin, Jr., on April 6, 1795.²⁸

In his letter of appointment to Chapin, Secretary of War Pickering was careful to point out Chapin's responsibilities to the Indian nations within the scope of his authority. He wrote Chapin:

So your principal concern will be to protect the tribes under your superintendence from injury and imposition which too many of our people are disposed to practice upon them, diligently to employ all the means under your direction to promote their comfort and improvements and to apply the public money and goods placed in your hands with inviolate integrity and prudent economy.²⁹

Chapin replied to this letter on May 6, 1795, accepting the position and reiterating the above stated responsibilities.³⁰ In a second letter to Pickering of the same date, he added the comment that he had discussed with the Oneidas their fear that the United States would ignore its obligations, assuring them that "... the U.S. had a disposition to do well by them as those at the westward and that their past service would be rewarded."³¹ It is clear that Israel Chapin, Jr., understood the federal government's Indian policy, the nature of the concerns which had engendered it, and his responsibilities to carry it out. Chapin, Jr. possessed considerable background concerning the specific issues of federal-state jurisdiction, because his father had been actively involved in the negotiations of 1794. Moreover, he had access to all the agency's papers.³²

As if to assure that no doubt existed concerning federal rights and obligations *vis á vis* the Six Nations, Pickering sent Chapin copies of the Treaties of 1794 along with the payment of \$5,000 due to the Oneidas, Tuscaroras, and Stockbridge, commenting "... as you may have frequent occasion to recur to them."³³

Chapin did not have long to wait for the land issue to arise. On June 13, 1795,³⁴ he informed Pickering that Jasper Parrish, an interpreter, was at Buffalo Creek attempting to get the Cayugas and Onondagas to hold a treaty with the state regarding their land. Prior to this, Chapin had informed Pickering that a proposed treaty had been called by the New York commissioners to purchase the Oneida, Onondaga, and Cayuga lands.³⁵ Not taking any chance, Pickering contacted United States Attorney General William Bradford for an opinion. Bradford's opinion was unequivocal; the rights to Indian land could not be extinguished except by a treaty held under the authority of the United States.³⁶ Pickering sent a strongly worded letter to Chapin informing him that the proposed New York treaties were illegal. He went on to direct Chapin as follows:

... I have now to instruct you, that you will give no aid or countenance to the measure; as it is repugnant to the law of the United States made to regulate trade and intercourse with the Indian tribes. The Attorney General of the United States has given his opinion that the reservations of those tribes (Oneida, Onondaga, and Cayuga) within the State of New York form no exception to the General Law: but whenever purchased, the bargains must be made at a treaty held under the authority of the United States. Besides giving no countenance to this unlawful. . . , [y]ou are to tell those tribes of Indians that any bargains they made at such a treaty as that proposed to be held at Scipio, will be void; and as the guardian of their rights you will advise them not to listen to the invitation of any commissioners unless they have authority from the United States to call a treaty.³⁷

Pickering went on to express his umbrage at Governor Clinton for his refusal to make application to Philadelphia for a treaty in violation of the federal law and he had sent a copy of the Attorney General's opinion to Governor Clinton. There can be no doubt that, as of the end of June, the United States opposed the illegal efforts of the state of New York to negotiate for Oneida land, and that the agents for the state were well informed on the federal position, as was the Governor, George Clinton. Pickering went so far as to make it clear that even if the Indians acquiesced the agreement would still be void.

On July 3, Pickering replied to Chapin's letter regarding Parrish's treaty efforts. He expressed surprise that Parrish would proceed without orders, repeated his admonishments against such illegal efforts, and added that unless a United States Commissioner held the treaty, neither he nor Parrish were ". . . to give any countenance to it; but on the contrary to tell the Indians that it will be improper and unsafe."³⁸

John Jay became the Governor of New York State in July and on the 13th³⁹ he wrote to Pickering saying that he had received the Attorney General's opinion, but because of the short tenure of his office he would postpone any decision or opinion of the negotiations with the Indian nations. Additionally, Jay pointed out that the act of establishing the commissioners did not require a request to the federal government for an Indian commissioner as Pickering had been led to believe. On July 18, he again wrote Pickering, this time to request that the President appoint a commissioner to hold a treaty with the St. Regis Indians sometime in mid-September at Fort George (Lake George).⁴⁰ It is significant that Jay made no mention of the Oneida, Onondaga, and Cayuga negotiations, that he asked for no commissioner to act with these tribes, and that in his request he specified three individuals, Wadsworth, Elsworth, and Sedgwick, who might be suitable because they lived a convenient distance from the treaty site. Jay's consideration in this matter was with the appointment of a specific individual to deal with a single treaty instance, nothing more.

On July 21, Pickering wrote to President Washington informing him of the exchanges with New York over Indian land issues.⁴¹ He reported that Governor Jay seemed to have separated the land questions of the Onondaga, Cayuga, and Oneida from that of the St. Regis and requested a commissioner only for the St. Regis negotiation. Pickering found no reason to deny the request, saying, ". . . it would seem desirable to give facility to every measure of a state government, which conforms to the regulations prescribed by the laws of the Union."⁴² As to the eligible commissioners, he eliminated Elsworth and Sedgwick because they were congressmen, and suggested Jeremiah Wadsworth and Elias Boudinot, the latter being a former congressman from New Jersey. Washington concurred with these recommendations as well as with Pickering's stand on the unconstitutionality of the New York efforts to negotiate with the Onondagas, Cayugas, and Oneidas, and directed him to take necessary steps to prevent the state's violation of federal treaty rights.⁴³

On July 31, Chapin wrote to Pickering that the New York commissioners had concluded treaties with the Cayuga and Onondaga

and were on their way to Oneida.⁴⁴ Chapin reported his intention to leave immediately for Oneida, “. . . to ingage [*sic*] the treaty will not take place there under the present Commissioners.” To emphasize that there was no federal support of acquiescence given to these treaties, he pointed out that he had not furnished financial or material support to the Indians and that his presence should not be construed as federal support; he was there as a private citizen.

Armed with Pickering’s directives, Chapin took a different posture at Oneida.⁴⁵ With the New York commissioners present, he revealed to the Oneidas the contents of Pickering’s letter, and told them that the treaty negotiations were unconstitutional and that they should not listen to the New York commissioners unless the commissioners had the authority of the United States to call a treaty, an authority they obviously did not have. Although divided, the Oneidas turned down the offer of the state of New York. On August 26, Pickering wrote Chapin to say that he had done all he could to prevent the illegal actions of the state.⁴⁶

Returning to the impending negotiations between New York and the St. Regis, Pickering wrote to Governor Jay to clarify the roles of United States and New York State commissioners.⁴⁷ Since the conference over which Colonel Wadsworth was to preside was due to begin on September 18, Pickering sent the following clarification to Jay:

Tho’ the cession of Indian land will be to the State, yet the instrument of cession is to be in the form of a treaty or convention, to be entered into “pursuant to the constitution;” of course to be ratified by the President with the advice and consent of the Senate. *The State Commissioners negotiate only for the price.*⁴⁸

In spite of all remonstrances, the New York commissioners concluded a treaty with the Oneidas on September 15, 1795.⁴⁹ This document shows the presence of three New York commissioners, Philip Schuyler, John Cantine, and David Brooks, but no United States Commissioner. On October 9, Chapin wrote to Pickering telling him that he had been informed that a treaty had been completed with the Oneidas covering 100,000 acres, but that he did not know the price paid.⁵⁰

Was a United States Indian Commissioner present at the Treaty of September 15, 1795? It is clear from the correspondence of the parties concerned that the federal government never countenanced the negotiations with the Onondagas, Cayugas, and Oneidas, and never appointed a United States Commissioner to hold any treaties with these nations in 1795. It is equally clear that the Governors of

New York, George Clinton and John Jay, were apprised of the situation, as were the New York Indian commissioners; that they were specifically and repeatedly informed that they were violating the federal Constitution and laws; and that they chose to ignore the admonishments and proceed with the treaty negotiations.

It might be argued that a United States Indian Commissioner had indeed been appointed, and that his name has merely failed to surface in the historical records, but this seems highly unlikely. A list of federal government officers in Washington's handwriting shows that no commissioner had been appointed to replace Timothy Pickering.⁵¹ Procedurally, an Indian Commissioner was appointed when the federal government desired to conduct a treaty or when the state made a specific request, as in the case of the St. Regis treaty.⁵² The evidence indicates that the state made no request in the case of the Oneidas, Onondagas, and Cayugas. Nor can the presence of Parrish and Chapin at meetings between New York commissioners and Indian nations be construed as federal sanction of the meetings. As pointed out, Pickering explicitly prohibited this in his letter of July 3 to Chapin. Therefore, neither of these men could have acted as the United States Commissioner. The final possibility to consider is that Jeremiah Wadsworth could have acted in the Oneida treaty as United States Commissioner, but at the time the treaty was held, he was at Fort Erie.⁵³ This undoubtedly is the reason he did not hold a treaty with the St. Regis Indians as he had been commissioned to do. Furthermore, had he served in any capacity at the Oneida treaty, his name would have appeared in the account book of the Superintendent, Israel Chapin.⁵⁴ While this record shows an account for Chapin for August to attend the first attempt of the New York commissioners to negotiate a treaty, there is no other reference to treaty expenses for other persons in August or September of 1795. Because Chapin was charged with the responsibility of paying expenses and keeping the accounts of the superintendency, it is logical to assume any payment would appear in his records.

Finally, and to lend support to the absence of a United States Commissioner, there is no evidence that the treaty was submitted to the President for his approval and to the Senate for its advice and consent.⁵⁵

Conclusion

A number of writers have commented upon the confusion in United States-New York Indian policy and the need for clarification. Judge Cuthbert Pound of the New York Court of Appeals succinctly

defined the problem in 1922 when he wrote: "Three sovereignties are thus contending for jurisdiction over the Indians—the Indian Nations, the United States and the State of New York—none of which exercises such jurisdiction in a full sense."⁵⁶ Gunther, in his 1958 review of the oscillations of federal-state Indian policy, further reinforced the need for a clear national policy and argued that in light of the Supreme Court decision in *Tuscarora v. FPC*,⁵⁷ the time was ripe for such resolution.⁵⁸

Yet, whatever the vagaries of policy in the nineteenth and twentieth centuries, it is not fair to justify New York State's present obduracy on the supposed eighteenth-century prerogatives of asserted state sovereignty. As the historical records clearly show, New York's claims were challenged by both the Continental Congress and the national government. The state has sought justification for its avarice in a contorted argument of sovereignty and supported its policy by the willful violation of federal laws and policy. As Gunther perceptively notes: "Of repeated, tradition-laden contentions are perhaps the most difficult to dislodge. And the very weakness of a position may indeed blind its defenders to the crumbling foundation."⁵⁹ New York's continuing assertion of sovereignty in the face of more than 150 years of case law to the contrary has obfuscated issues and not resolved them, which is to the disservice of the Indians, the state, and the national government.

NOTES

1. *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661 (1974), *remanded*, C.V. No. 70-CV-35 (N.D.N.Y. Nov. 12, 1975).

2. Knox to Washington, Dec. 29, 1794. *AMERICAN STATE PAPERS: INDIAN AFFAIRS I*, at 544.

3. 32 *THE WRITINGS OF GEORGE WASHINGTON FROM THE ORIGINAL MANUSCRIPT SOURCES* 9-10 (John S. Fitzpatrick, ed. 1931-1944) [hereinafter cited as *WASHINGTON PAPERS*].

4. 1 Stat. 137-38.

5. 1 Stat. 329-32.

6. F. PRUCHA, *AMERICAN INDIAN POLICY IN THE FORMATIVE YEARS* 48 (Harvard Univ. Press 1962).

7. Cornplanter to Washington, Dec. 1790; Washington to Cornplanter, Dec. 29, 1790, *AMERICAN STATE PAPERS: INDIAN AFFAIRS I*, at 140-43.

8. *Id.* at 545-46 [hereinafter referred to as *Canandigua Treaty*].

9. *Id.* at 546 [hereinafter referred to as *Oneida Treaty*].

10. *Id.* at 10, *Treaty of Fort Stanwix*, Oct. 22, 1784.

11. *Id.* at 5, *Treaty of Fort Harmer*, Jan. 9, 1789.

12. *Laws of New York, Poughkeepsie*, 1782, sixth sess., ch. 11, 267-68.

13. *Statute of Mar. 25, 1782, An Act for Indian Affairs*, *Laws of New York*, sixth sess., ch. 48, 565.

14. ARTICLES OF CONFEDERATION, art. IX.
15. Treaty of Fort Stanwix, Oct. 22, 1784, AMERICAN STATE PAPERS: INDIAN AFFAIRS I, at 10.
16. Treaty of Fort Herkimer, June 28, 1785. Report of Special Comm. to Investigate the Indian Problem of the State of New York, Leg. Doc. 51, p. 234-36 (Albany, 1861) [hereinafter cited as Whipple Report].
17. W. HOUGH, 1 PROCEEDINGS OF THE COMMISSIONERS OF INDIAN AFFAIRS APPOINTED BY LAW FOR THE EXTINGUISHMENT OF INDIAN TITLES IN THE STATE OF NEW YORK 157-72 (Albany 1861).
18. Whipple Report, *supra* note 16, at 237-41.
19. Treaty of Fort Harmar, Jan. 9, 1789, AMERICAN STATE PAPERS: INDIAN AFFAIRS I, at 5-6.
20. Onondaga Treaty, Mar. 11, 1793; Whipple Report, *supra* note 16, at 195-98.
21. Act of Legis., Jan. 22, 1794; Laws of New York, 1794, 17th sess., 26.
22. Governor Clinton to the Legislature, Feb. 9, 1794, Laws of New York, 1794, 17th sess., 69-70.
23. *Id.*
24. Joint Resolution, Feb. 10, 1794, Laws of New York, 1794, 17th sess., 71.
25. *Id.*, *An Act Relative to the Indians Resident Within This State*, Mar. 27, at 36.
26. Washington Papers, *supra* note 3, at 34 n.77.
27. *Id.*
28. Timothy Pickering to Israel Chapin, Jr., Apr. 6, 1795, 11 HENRY O'REILLY PAPERS (New York Historical Soc.) [hereinafter cited as O'REILLY PAPERS].
29. *Id.*
30. *Id.*, Chapin, Jr. to Pickering, May 6, 1795.
31. *Id.*
32. *Id.*
33. *Id.*, Pickering to Chapin, Jr., May 22, 1795.
34. *Id.*, Chapin, Jr. to Pickering, June 13, 1795.
35. *Id.*, Chapin, Jr., to Pickering, May 22, 1795.
36. *Id.*, OF. ATT'Y GEN., William Bradford with Letter of Transmittal to Pickering, June 16, 1795.
37. *Id.* Pickering to Chapin, Jr., June 29, 1795.
38. *Id.* Pickering to Chapin, Jr., July 3, 1795.
39. John Jay to Timothy Pickering, July 13, 1795, WASHINGTON PAPERS, *supra* note 3.
40. *Id.*, July 18, 1795.
41. *Id.*, Pickering to Washington, July 21, 1795.
42. *Id.*
43. *Id.* at 34, 250-51.
44. Chapin, Jr. to Pickering, 11 O'REILLY PAPERS, *supra* note 28.
45. *Id.*
46. *Id.*, Pickering to Chapin.
47. Pickering to Gov. John Jay, Sept. 1, 1795, JAY PAPERS, Special Collections, Columbia University.
48. *Id.* (emphasis added).
49. Whipple Report, *supra* note 16, at 244-49.
50. Chapin to Pickering, Oct. 9, 1795, 11 O'REILLY PAPERS, *supra* note 28.
51. WASHINGTON PAPERS, *supra* note 3, at 34, 165-69. This list was probably written in 1795.

- 52. AMERICAN STATE PAPERS: INDIAN AFFAIRS I, at 585.
- 53. Chapin to Pickering, Oct. 9, 1795, 11 O'REILLY PAPERS, *supra* note 28.
- 54. *Id.*, *The United States in Account with Israel Chapin, Jr.*
- 55. See Kappler, 1 Stat. 4.
- 56. Pound, *Nationals Without a Nation: The New York State Tribal Indians*, 22 COLUM. L. REV. 99 (1922).
- 57. Gunther, *Governmental Power and New York Indian Lands—A Reassessment of a Persistent Problem of Federal-State Relations*, 8 BUFFALO L. REV. 3 (1958).
- 58. *Tuscarora v. FPC*, 164 F. Supp. 107 (W.D.N.Y.), *modified* 257 F.2d 885 (2d Cir.), *cert. denied*, 79 S.Ct. 66 (1958).
- 59. Gunther, *Governmental Power and New York Indian Lands—A Reassessment of a Persistent Problem of Federal-State Relations*, 8 BUFFALO L. REV. 3, 21 (1958).